

FAX

RECEIVED
CENTRAL FAX CENTER
MAY 09 2006

ATTN. Ramy M. Osman

Fax Number 1 571 273 8300

Phone Number 571 272 4008

FROM Volel Emile, Esq.

Fax Number 512 306 0240

Phone Number 512 306 7969

SUBJECT Response to Non-Complaint Brief (09/964,999)

Number of Pages 14

Date 5/9/2006

MESSAGE

This fax transmission contains:

1. one copy of a Fax Transmittal Form; and
2. one copy of the Response (i.e., Appeal Brief).

Volel

CENTRAL FAX CENTER

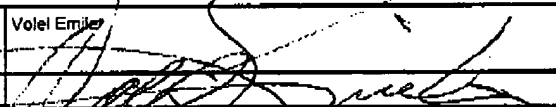
MAY 09 2006

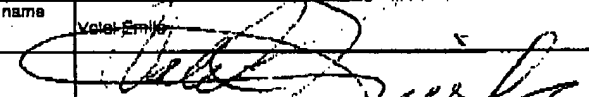
PTO/SD/21 (02-04)

Approved for use through 07/31/2006. OMB 0551-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	03/964,999
	Filing Date	04/27/2006
	First Named Inventor	Sanaa F. Abdelhadi
	Art Unit	2157
	Examiner Name	Ramy M. Osman
Total Number of Pages in This Submission	Attorney Docket Number	AUS920010901US1

ENCLOSURES (Check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s)	<input type="checkbox"/> After Allowance communication to Technology Center (TC) <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
Remarks Response to Non-Compliant Appeal Brief		
SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT		
Firm or Individual Name	Volei Emile	
Signature		
Date	05/09/2006	

CERTIFICATE OF TRANSMISSION/MAILING		
I hereby certify that this correspondence is being transmittal to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.		
Typed or printed name	Volei Emile	
Signature		Date 05/09/2006

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

MAY 09 2006

Appl. No. 09/964,999
Response to Notice of Non-Compliant Appeal Brief dated 05/09/2006
Reply to Office Action of 05/04/2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Application of:	:
Sanaa F. Abdelhadi	:
	: Before the Examiner:
Serial No: 09/964,999	: Ramy M. Osman
	:
Filed: 09/27/2001	: Group Art Unit: 2157
	:
Title: APPARATUS AND METHOD	: Confirmation No.: 2723
OF ASCERTAINING REMOTE	:
SYSTEMS ACCESSIBILITY BEFORE	:
RUNNING REMOTE COMMANDS	:

RESPONSE TO NOTICE OF NON-COMPLAINT APPEAL BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is a Response to a Notice of Non-Compliant Appeal Brief dated May
04, 2006.

AUS920010901US1

Page 1 of 12

Appl. No. 09/964,999
Response to Notice of Non-Compliant Appeal Brief dated 05/09/2006
Reply to Office Action of 05/04/2006

BRIEF FOR APPLICANTS - APPELLANTS

(i)

Real Party in Interest

The real party in interest is International Business Machines Corporation (IBM), the assignee.

(ii)

Related Appeals and Interferences

There are no other appeals or interferences known to appellants, appellants' representative or assignee, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(iii)

Status of Claims

Claims 1 - 20 have been finally rejected under 35 U.S.C. §102(e) as being anticipated by Meyer (US 6,701,364) in an Office Action dated July 25, 2005. In that Office Action, Claims 3, 8, 13 and 18 were also rejected under 35 U.S.C. §112 as failing to comply with the enablement requirement. In a telephone interview on September 19, 2005, the Examiner agreed to cancel Claims 3, 4, 8, 9, 13, 14, 18 and 19 by Examiner's amendment in order to put the Application in proper form for Appeal. However, in an interview Summary dated October 19, 2005, the Examiner stated that the claims will have to be canceled by Applicants in the Appeal Brief.

Consequently, Claims 3, 4, 8, 9, 13, 14, 18 and 19 are canceled in the present Appeal Brief. Further, Claims 5, 10, 15 and 20 are amended to change their dependency from a canceled claim to a pending claim.

Thus, Claims 1, 2, 5 - 7, 10 - 12, 15 - 17 and 20 are being appealed.

AUS920010901US1

Appl. No. 09/964,999

Response to Notice of Non-Compliant Appeal Brief dated 05/09/2006

Reply to Office Action of 05/04/2006

(iv)

Status of Amendment

All amendments, except the one in the present Appeal Brief, have been entered.

(v)

Summary of the Claimed Subject Matter

The present invention provides an apparatus, system, computer program product and method of ascertaining remote systems accessibility before running remote commands (see Title on page 1). Accordingly, when a command, to be executed on remote computer systems, is entered in a local command interface, a check is automatically made to determine each of the computer systems accessibility. The command is then sent only to the computer systems that have been determined to be accessible (see page 14, lines 24 – 30 and item 730 in Fig. 7).

(vi)

Grounds of Rejection to be Reviewed on Appeal

(1) Whether Claims 1, 6, 11 and 16 were properly rejected under 102(e) as being anticipated by Meyer, and (2) whether Claims 2, 7, 12 and 17 were properly rejected under 103 as being unpatentable over Meyer in view of Johnson II et al.

(vii)

Arguments

Whether Claims 1, 6, 11 and 16 were properly rejected under 102(e) as being anticipated by Meyer

In considering a Section 102 rejection, all the elements of the claimed invention must be disclosed in a single item of prior art in the form literally defined in the claim. *Jamesbury Corp. v. Litton Indus. Products*, 756 F.2d 1556, AUS920010901US1

Appl. No. 09/964,999

Response to Notice of Non-Compliant Appeal Brief dated 05/09/2006

Reply to Office Action of 05/04/2006

225 USPQ 253 (Fed. Cir. 1985); *Atlas Powder Co. v. Dupont*, 750 F.2d 1569, 224 USPQ 409 (Fed. Cir. 1984); *American Hospital Supply v. Travenol Labs.*, 745 F.2d 1, 223 USPQ 577 (Fed. Cir. 1984).

Meyer purports to display a method and apparatus for remote computer management using web browser application to display system hardware and software configuration. According to the purported teachings of Meyer, a controlling computer addresses a remote standalone computer system through an HTTP server. Once communication is established between the controlling computer and the remote standalone computer system, computer diagnostics are performed.

However, Meyer does not teach the steps of *entering a remote command in a local command interface, automatically determining each of the computer systems accessibility and dispatching the command to the computer systems that are determined to be accessible* as claimed. That is, since Meyer advocates the use of a browser to establish communication between the controlling computer and the remote computer, then a user, at the controlling computer, has to manually (**and not automatically**) attempt to connect with the remote computer (e.g., using the remote computer's IP address). It is only after the communication has been established that the user may have the opportunity to enter the command to be executed by the remote computer in the browser (see col. 6, lines 1 – 23 and col. 7, lines 26 - 39).

Note that the scenario described above has to occur for every remote standalone that the user wants to communicate with. Therefore, the command has to be entered as many times as there are standalone computers that are being diagnosed.

Whether Claims 2, 7, 12 and 17 were properly rejected under 103 as being unpatentable over Meyer in view of Johnson II et al.

Meyer, as stated by the Examiner and as described above, teaches the step of determining whether a remote computer system is accessible without the
AUS920010901US1

Appl. No. 09/964,999

Response to Notice of Non-Compliant Appeal Brief dated 05/09/2006

Reply to Office Action of 05/04/2006

step of pinging the computer system by having a user manually send an HTTP request from the controlling computer to the standalone computer. Yet, the Examiner uses Johnson II et al., which teaches the step of ping a computer to perform incremental network transmissions to the computer, as support for the rejection of the dependent claims. Applicants respectfully disagree.

It is a well settled law that "[w]hen [an] ... invention is made by combining known components to achieve a new system, the prior art must provide a suggestion or motivation to make such a combination. It is insufficient that the prior art shows similar components, unless it also contains some teaching, suggestion, or incentive for arriving at the claimed [invention]. See *Northern Telecom, Inc. v. Datapoint Corp.*, 908 F.2d 931, 934, 15 USPQ 2d 1321, 1323 (Fed. Cir. 1990), *Heidelberger Druckmaschinen AG v. Hantscho Commercial Prods., Inc.*, 21 F.3d 1068, 1072, 30 USPQ 2d 1377, 1379 (Fed. Cir. 1993).

Since Meyer specifically teaches a method of determining a computer's accessibility, why, then, would someone incorporate the step of ping described by Johnson II et al. to determine whether a remote computer system is accessible absent some specific teachings in the references to do so?

Further, even if, arguendo, someone were to be motivated to combine the teachings of Meyer with those of Johnson II et al., Applicants fail to see how the resulting combination would show the claimed invention. That is, the ping would have to replace the HTTP request. And if the HTTP request is replaced how would the resulting combination perform the task in the claimed invention?

Thus, Applicants submit that Claims 2, 7, 12 and 17 are allowable over the applied references.

Hence Applicants request allowance and passage to issue of all the pending claims.

AUS920010901US1

Appl. No. 09/964,999

Response to Notice of Non-Compliant Appeal Brief dated 05/09/2006

Reply to Office Action of 05/04/2006

Respectfully Submitted

By: 

Volel Emile
Attorney for Applicants
Registration No. 39,969
(512) 306-7969

AUS920010901US1

Page 6 of 12

Appl. No. 09/964,999

Response to Notice of Non-Compliant Appeal Brief dated 05/09/2006

Reply to Office Action of 05/04/2006

(VIII)

APPENDIX

1. (Previously amended) A method of executing remote commands on remote computer systems comprising the steps of:

entering a remote command in a local command interface, said command to be executed by said computer systems;

automatically determining each of said computer systems accessibility;
and

dispatching said command to the computer systems that are determined to be accessible.

2. (Previously amended) The method of Claim 1 wherein said step of automatically determining the computer systems accessibility includes the step of pinging each of said computer systems.

3. Canceled.

4. Canceled.

5. (Currently amended) The method of Claim [[4]] 2 further including the step of automatically re-dispatching the command for execution to a computer system that failed to execute the command successfully and was corrected.

AUS920010901US1

Appl. No. 09/964,999

Response to Notice of Non-Compliant Appeal Brief dated 05/09/2006

Reply to Office Action of 05/04/2006

6. (Previously amended) A computer program product in a computer readable medium for executing remote commands on remote computer systems comprising:

code means for allowing a remote command to be entered in a local command interface, said command to be executed by said computer systems;

code means for automatically determining each of said computer systems accessibility; and

code means for dispatching said command to the computer systems that are determined to be accessible.

7. (Previously amended) The computer program product of Claim 6 wherein said code means for automatically determining the computer systems accessibility includes code means for pinging each of said computer systems.

8. Canceled.

9. Canceled.

10. (Currently amended) The computer program product of Claim [[9]] Z further including code means for automatically re-dispatching the command for execution to a computer system that failed to execute the command successfully and was corrected.

11. (Previously amended) An apparatus for executing remote commands on remote computer systems comprising:

AUS920010901US1

Appl. No. 09/964,999

Response to Notice of Non-Compliant Appeal Brief dated 05/09/2006

Reply to Office Action of 05/04/2006

means for entering a remote command in a local command interface, said command to be executed by said computer systems;

means for automatically determining each of said computer systems accessibility; and

means for dispatching said command to the computer systems that are determined to be accessible.

12. (Previously amended) The apparatus of Claim 11 wherein said means for automatically determining the computer systems accessibility includes means for pinging each of said computer systems.

13. Canceled.

14. Canceled.

15. (Currently amended) The apparatus of Claim 14 12 further including means for automatically re-dispatching the command for execution to a computer system that failed to execute the command successfully and was corrected.

16. (Previously amended) A computer system for executing remote commands on remote network computer systems comprising:

at least a memory device for storing data;

at least a processor for allowing a command to be entered in a local command interface, said command to be executed by said network

AUS920010901US1

Appl. No. 09/964,999

Response to Notice of Non-Compliant Appeal Brief dated 05/09/2006

Reply to Office Action of 05/04/2006

computer systems, for automatically determining each of said network computer systems accessibility, and for dispatching said command to the network computer systems that are determined to be accessible.

17. (Previously amended) The computer system of Claim 16 wherein said processor automatically determines the network computer systems operability by pinging each of said network computer systems.
18. Canceled.
19. Canceled.
20. (Currently amended) The computer system of Claim ~~49~~ 16 wherein the at least one processor further re-dispatches the command automatically to a network computer system that failed to execute the command successfully and was corrected.

AUS920010901US1

Appl. No. 09/964,999

Response to Notice of Non-Compliant Appeal Brief dated 05/09/2006

Reply to Office Action of 05/04/2006

(lx)

Evidence Appendix

None.

AUS920010901US1

Page 11 of 12

Appl. No. 09/964,999

Response to Notice of Non-Compliant Appeal Brief dated 05/09/2006

Reply to Office Action of 05/04/2006

(x)

Related Proceedings Appendix

None.

AUS920010901US1

Page 12 of 12